

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Claims 1-23 are pending after entry of the amendments set forth herein.

Claims 1-19 were examined. Claims 1-3, 10 and 11 were rejected. Claims 4-8 and 13-19 were allowed. Claims 9 and 12 were objected to.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

In the Official Action of August 18, 2004, claims 1-3 were rejected under 35 U.S.C. Section 112, second paragraph as being indefinite. With regard to claim 1, Applicants have amended the objected to phrase “said axis” to read –an axis—so as to overcome the antecedent basis ground of objection. Claim 2 has been amended to clearly refer back to the axis that is recited in claim 1 that is transverse to the first axis. In view of these amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1-3 under 35 U.S.C. Section 112, second paragraph as being indefinite, as being no longer appropriate.

Claim 9 was objected to in that the Examiner required the phrase “the unlocked without” to be changed to –the unlocked position without--. Applicants have effected this change by the above amendment. Accordingly the Examiner is respectfully requested to reconsider and withdraw the objection to claim 9 as being no longer appropriate.

Claims 1,2,10 and 11 were rejected under 35 U.S.S. Section 102(e) as being anticipated by Tyagi (U.S. Patent No. 5,755,660). Tyagi provides a retractor with three self-retaining retractors that are positionable long different axes, albeit all substantially in a horizontal direction. That is all of the retractors are movable in direction substantially horizontal or parallel to the plane of the retractor frame. Applicants have amended claim 1 to recite that the foot is adjustable in a vertical direction relative to the frame member and transverse to a direction in which the blades extend. Claim 10 has been amended to recite that the shoe is adjustable in a direction toward or away from the patient’s body. None of the retractors of Tyagi is disclosed to move vertically with respect to the patient, or toward or away from the patient. Rather, each retractor moves horizontally to retract tissue in the conventional way.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1,2,10 and 11 under 35 U.S.S. Section 102(e) as being anticipated by Tyagi (U.S. Patent No. 5,755,660), as being no longer appropriate.

Claim 3 was indicated to be allowable if rewritten to overcome the rejection under 35 U.S.C. Section 112, second paragraph, and to include all of the limitations of the base claim and any intervening claims. In response thereto, Applicants have submitted new claim 20 above, which combines the recitations of claims 1 and 3 (prior to the amendment of claims 1 and 3 above) and also overcomes the rejection under 35 U.S.C. Section 112, second paragraph. New claim 21 corresponds to the recitations of claim 2 and depends from claim 20.

Claim 12 was indicated to be allowable if rewritten to include all of the limitations of the base claim and any intervening claims. In response thereto, Applicants have submitted new claim 22 above, which combines the recitations of claims 10 and 12 (prior to the amendment of claim 10 above). New claim 23 corresponds to the recitations of claim 11 and depends from claim 22.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-006CON5.

Respectfully submitted,

LAW OFFICE OF ALAN W. CANNON

Date: _____

11/6/04

By: _____

[Signature]

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